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6 **UNITED STATES DISTRICT COURT**  
7 **SOUTHERN DISTRICT OF CALIFORNIA**  
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9 ANTHONY JOHN FAVALE,

10 Plaintiff,

11 vs.

12 MICHAEL J. ASTRUE, Commissioner of  
Social Security Administration,

13 Defendant.

CASE NO. 09cv2513 WQH (WMc)

ORDER

HAYES, Judge:

14 The matters before the Court are the Motion to Remand filed by Plaintiff Anthony John  
15 Favale (Doc. # 13), the Motion for Summary Judgment filed by Defendant Michael J. Astrue  
16 (Doc. # 14), and the Report and Recommendation of the Magistrate Judge (Doc. # 16).

17 **BACKGROUND**

18 On July 17, 2006, Plaintiff applied for Social Security Disability Insurance Benefits  
19 alleging he has been disabled since December 18, 1993. (Doc. # 6 at AR 23.)<sup>1</sup> Plaintiff  
20 subsequently amended his date of disability to April 25, 2006. *Id.* at 88. On May 26, 2009,  
21 the Administrative Law Judge (“ALJ”) found that Plaintiff was not entitled to disability  
22 benefits. *Id.* at 10-17. On September 8, 2009, the Appeals Council adopted the ALJ’s  
23 findings. *Id.* at 1. On November 9, 2009, Plaintiff filed a Complaint for Judicial Review and  
24 Remedy on an Administrative Decision under the Social Security Act. (Doc. # 1). On April  
25 23, 2010, Plaintiff filed a Motion to Remand. (Doc. # 13). On May 20, 2010, Defendant filed  
26 a Motion for Summary Judgment. (Doc. # 14).

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28 <sup>1</sup> Citations are to the Administrative Record and use the internal pagination which  
appears in the upper right hand corner of each page.

On July 14, 2010, the Magistrate Judge issued a Report and Recommendation (“R&R”) which recommends that this Court deny Plaintiff’s motion and grant Defendant’s motion. (Doc. # 16 at 2). The R&R concludes the ALJ properly rejected the opinion of Plaintiff’s treating psychologist because it was not supported by objective evidence and was contradicted by Plaintiff’s treating psychiatrist’s opinion. *Id.* at 6. Neither party objected to the R&R.

### STANDARD OF REVIEW

The duties of the district court in connection with the Report and Recommendation of a Magistrate Judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b). The district judge must “make a de novo determination of those portions of the report ... to which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b). The district court need not review de novo those portions of a Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc).


The ALJ’s decision denying benefits “will be disturbed only if that decision is not supported by substantial evidence or it is based upon legal error.” *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999) (citation omitted). “Substantial evidence is more than a mere scintilla but less than a preponderance.” *Id.* (citation omitted).

### DISCUSSION

The Court has reviewed the R&R and the administrative record. The Court concludes that the Magistrate Judge correctly determined that the ALJ properly rejected Plaintiff’s treating psychologist’s opinion.

IT IS HEREBY ORDERED that the Magistrate Judge’s Report and Recommendation (Doc. # 16) is adopted in its entirety. Plaintiff’s Motion to Remand (Doc. # 13) is **DENIED**. Defendant’s Motion for Summary Judgment (Doc. # 14) is **GRANTED**.

DATED: August 30, 2010

  
**WILLIAM Q. HAYES**  
 United States District Judge